

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARIO JOSEPH BARDO,
Petitioner,

v.

KEN CLARK, Warden,
Respondent.

Case No. 19-00759 BLF (PR)

**ORDER SETTING BRIEFING ON
PETITIONER'S MOTION FOR
LEAVE TO FILE AN AMENDED
PETITION**

(Docket No. 46)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the assistance of counsel. On October 28, 2019, the Court granted Petitioner's motion to dismiss counsel of record and reopened the matter to permit Petitioner an opportunity to file an opposition to Respondent's motion to dismiss the petition for failure to exhaust state court remedies. Dkt. Nos. 20, 23. Because of the delay in Petitioner obtaining his trial records from former counsel, the Court stayed briefing. Dkt. No. 37. On August 17, 2020, Petitioner filed notice that he received the files from former counsel. Dkt. No. 42.

Petitioner moved for leave to file an amended petition, Dkt. No. 40, which was denied without prejudice because he had failed to file a proposed amended petition. Dkt. No. 45. Petitioner was granted leave to file a renewed motion for leave to file an amended


petition along with the proposed amended petition. *Id.*

On October 13, 2020, Petitioner filed an “amended petition for writ of habeas corpus,” but failed to file an accompanying motion for leave to file it. Dkt. No. 46. Nevertheless, the Court will liberally construe the filing of this amended petition as a motion for leave to do so. It also appears that Petitioner failed to serve this pleading on Respondent as there is no certificate of service. Accordingly, this order shall serve as notice on Respondent, who shall be given an opportunity to file an opposition or statement of non-opposition to Petitioner’s motion and proposed amended petition. Dkt. No. 46.

Respondent’s opposition to Petitioner’s proposed amended petition shall be filed **no later than twenty-eight (28) days from the date this order is filed**. Petitioner’s reply shall be filed **fourteen (14) days** after his receipt of Respondent’s opposition.

IT IS SO ORDERED.

Dated: November 3, 2020


BETH LABSON FREEMAN
United States District Judge